IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9202 of 2005
To
SPECIAL CIVIL APPLICATION No. 9214 of 2005
With
SPECIAL CIVIL APPLICATION No. 9214 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GHADECHA UGARCHAND POPATLAL & 12 - Petitioner(s)

Versus

LAXMANJI LAKHAJI MANGAJI THAKOR & 3 - Respondent(s)

==========

Appearance :

MS TRUSHA K PATEL for Petitioner No(s).: 1,2,3,4,5, 6,7,8,9,10,11,12,13.

None for Respondent No(s).: 1, 2,3.

RULE SERVED for Respondent No(s).: 1 - 1,2 - 2,3 - 3.

MR PR ABICHANDANI AGP for Respondent No(s).: 4.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/08/2005

ORAL JUDGMENT

.

1. In this group of petitions, the petitioners have challenged order dated 29th June, 2002 passed by Collector, Gandhinagar as also order dated 7th July, 2004 passed by Additional Secretary (Appeals), Revenue Department, Govt. of Gujarat by which the order passed by the Collector came to be confirmed.

2. The short facts leading to the group of petitions are not in serious dispute which are as follows:

2.1 The land bearing block no.213 of village Kudasan Taluka and District: Gandhinagar admeasuring 15578 sq. mtrs was shown as old tenure land in the revenue records from the year 1979-80 onwards. Though earlier the land in question was indicated to be a new tenure land. On 31/3/1995 the original land owners sold the land in question to one Shri Keshabhai Kamabhai and Smt. Sarikaben. Entries in this regard being entry no.2453 was also made in the revenue records on 6/4/1995. The same was certified some time thereafter. On 22/8/1995 Keshabhai and Sarikaben sold the land in favour of one Shri Jivanlal Bhagavanlal Sharma and revenue entry in this regard being entry no.2502 was made on 26/9/1995.

On 14/6/1996 Shri Jivanlal Sharma sold the land in favour of the present petitioners. Revenue entries evidencing this sale transaction being entries no.2576, 2579, 2580 and 2582 were made on 9/8/1996. On 14/3/2001 Prant Officer issued a show cause notice to the petitioners seeking to take the above mentioned entries dated 9/8/1996 in suo-motu revision. The petitioners filed their reply and opposed the proposal for revising the entries. It appears that the main objection of the authorities against the entries in question was that the land in question was new tenure land and was given to the original owner as a tenant under the provisions of the Bombay Tenancy and Agricultural Lands Act. His sale of the land in question was ineffective and opposed to the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act. The authorities, therefore, were of the opinion that the sale by the original owner on 31/3/1995 and all subsequent sales would be ineffective and null and void. At this stage, it may also be noted that by a representation dated 2nd July, 2001, the petitioners pointed out to the Prant Officer that the petitioners would be ready and willing to pay the necessary premium to the Government even if it is found that the land in question was a new tenure land and,

therefore, the same could not have been sold without paying premium to the Government. This was in addition to contending before the Prant Officer that the petitioners were not aware about the status of the land being new tenure land and they had relied on the entries in the revenue records which showed the land as old tenure land.

3. Unimpressed by the averments of the petitioners the Collector, Gandhinagar passed an order dated 29th June, 2002 ordering deletion of the entries in question. The Collector came to the conclusion that the land in question was granted to the original owner under the provisions of Section 32 P of the Bombay Tenancy and Agricultural Lands Act for personal cultivation. Subject to the restrictions imposed in Section 43 of the said Act such land, therefore, could not have been sold without the prior permission of the Government. He also observed that scrapping of the term new tenure in the revenue records was irregular and unlawful. This has resulted into financial loss to the Government and in all subsequent sale deeds are, therefore, irregular and illegal. The entries are, therefore, required to be deleted. The revision application filed by the

petitioners came to be rejected by the Additional Secretary on 7th July, 2004 in which the order passed by the Collector was upheld for the same reasons.

4. Challenging the above orders passed by the revenue authorities, it is contended before this Court that the authorities erred in deleting the revenue entries which were made on the basis of registered sale deed. It is contended that the petitioners had no means of finding out that the land in question was a new tenure land despite the entry in the revenue record suggesting that the same is an old tenure land. It is contended that the petitioners had no means to verify that the entry in the revenue records as a old tenure land is irregularly made. It is further contended that the petitioners purchased the land in question by sale deed dated 14/6/1996. This was a third successive sale and the entries made in this regard could not have been deleted on the ground that the first sale of the land dated 31st March, 1995 itself was invalid and illegal. It is further contended that it is not open for the revenue authorities to examine the validity of the sale deed on the touch stone of the provisions of the Tenancy Act or any other Act and the revenue entries cannot be deleted on the ground that the

sale deed is offending provisions of the Tenancy Act. It is further contended that for the sale deed dated 14/6/1996, entries for which were made on 9/8/1996 show cause notice proposing reviewing of the entries came to be issued on 14/3/2001. It is, therefore, contended that after a gap of nearly 5 years it was not open for the authorities to review the entries already made and certified. It is also contended that the authorities did not take into account the decision of this Court in the case of **"Evergreen Apartment Co-op. Housing Society vs. Special Secretary, Revenue Department, Gujarat State" reported in 1991 (1) GLR page 113.**

5. Learned AGP Mr.P.R.Abichandani appearing for the State Government sought to support this orders passed by the authorities. He submitted that it is not disputed that the land was given to the original owner under the provisions of Section 32 P of the Bombay Tenancy and Agricultural Lands Act. His occupancy, therefore, was subject to the restrictions under Section 43 of the said Act and such land could not have been sold without prior approval of the authority and without payment of proper premium.

6. Respondent No.1,2 & 3 though served with the notice of Rule have not been represented.

7. From the above recording of facts and submissions made by the learned Advocates, it can be seen that the petitioners purchased the land in question on 14/6/1996 through a registered sale deed. Entries in this regard were made in 9/8/1996. Prant Officer issued a show cause notice on 14/3/2001 proposing to take the entries in question in suo-motu revision. Ultimately Collector passed his impugned order on 29/6/2002 deleting the entries on the ground that the first sale deed dated 31st March, 1995 itself was invalid being opposed to the provisions of Section 43 Bombay Tenancy and Agricultural Lands Act. It is by now well settled that the revenue records have only fiscal value and would not decide the rights between the parties. In the case of Evergreen Apartment Co-op. Housing Society vs. Special Secretary, Revenue Department, Gujarat State(supra) this Court has clearly held that power under one enactment cannot be exercised while dealing with a question under another enactment, especially so when revenue officer are empowered to act under various enactments and that power of revision must be exercised within a reasonable time.

In the decision of **"G.D. Patel vs. State of Gujarat and Ors."** reported in 2005 (2) GLR page 1370, the learned Single Judge observed that in RTS proceedings, the revenue authorities cannot go into the questions such as genuineness of Power of Attorney and/or authority of the power holder and such questions are required to be considered by a Civil Court and cannot go into such question in RTS proceedings while deciding the mutation entries in the record of rights which only has fiscal value and which do not decide any right, title or interest in favour of any person.

8. In the present case, I find that the petitioners had purchased the land in question at a time when the revenue records did not show the land as new tenure land. That the entries which were made in August, 1996 were sought to be revised by issuance of show cause notice in March, 2001. That the ground for deleting the entries as adopted by the authorities below was that the first sale of the land in question on 31/3/1995 was irregular since the sale was of a new tenure land without prior approval of the authorities. Under these circumstances, I find that the authorities erred in deleting the entries which were made on the basis of registered sale deed. If the

sale deed dated 31st March, 1995 was irregular or illegal, it is open to the revenue authorities to take such steps as may be available under the provisions of Bombay Tenancy and Agricultural Lands Act and also inquire into the legality of the sale deed dated 14/6/1996. However it was not open to quash the entries made in RTS proceedings by concluding that the sale of 31st March, 1995 and all subsequent sale deed were irregular. In view of this discussion the impugned orders passed by Collector Gandhinagar on 29th June, 2002 and Additional Secretary on 7th July, 2004 are quashed and set aside.

9. One may only take note of the offer of the petitioners to pay necessary premium as indicated by the petitioners vide their representation dated 2nd July, 2001. It will be open for the Government to take the same into consideration in proper proceedings, if found necessary. With these directions and observations, the petitions are allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

smita/